

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NORFOLK LOCAL OFFICE**

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DR. ELIZABETH KOSTAL, :
Claimant, : EEOC Charge No.:
v. : **SUPPLEMENT TO CHARGE OF
DISCRIMINATION**
: :
SOUTH UNIVERSITY OF VIRGINIA – :
MEMBER, LLC and SOUTH :
UNIVERSITY OF SAVANNAH, LLC :
Respondent.
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Claimant Dr. Elizabeth Kostal (“Claimant” or “Dr. Kostal”), hereby alleges through her counsel, Wigdor LLP, as against Respondents South University of Virginia-Member, LLC and South University of Savannah, LLC (collectively “South University” or “SU”), as follows:

PRELIMINARY STATEMENT

1. When Respondent South University ordered all employees back on campus in April 2021 (despite not asking students to do the same), Dr. Kostal—with her severe lung and heart conditions,¹ a pacemaker and inability for the COVID-19 vaccine—was extremely concerned. However, she knew that the Americans with Disabilities Act (“ADA”) protected people with disabilities like hers, so she requested permission to continue to teach remotely (as she had been doing successfully for over a year) as a reasonable accommodation and provided the necessary medical documentation.

2. Respondent South University quickly denied her request less than 24 hours later. In doing so, the University informed Dr. Kostal that it was not approving COVID-19-related

¹ Individuals with lung disease, heart conditions and weakened immune systems are more likely to experience severe complications, including death, from COVID-19. See CDC, Covid-19: People with Disabilities, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html> (last visited July 7, 2021).

accommodation requests for her or for anyone.

3. Faced with the decision to either risk her own life or the financial stability of herself and her family, Dr. Kostal made the impossible choice to capitulate to the University and work from campus. She double-masked, shut her office door and lectured anywhere from two to four hours to students who were still remote, only taking the masks off to eat and drink in her car during the day. She did so while surrounded by nursing students and faculty who shared the building and who were exposed to COVID-19 patients on a daily basis. Moreover, because of her various medical conditions and pacemaker, the effect of lecturing for that long while double-masked caused Dr. Kostal's heart to skyrocket to 150 beats a minute for the duration of the lecture, leaving her exhausted, dizzy and with the terrifying knowledge that she might have just damaged her heart even more.

4. Five weeks later, and only because they were faced with the threat of litigation over this anti-accommodation, anti-disability policy, did South University grant Dr. Kostal a 30-day temporary accommodation, while signaling that they would not continue this accommodation for much longer. The University said nothing of those other employees whose accommodations were denied unlawfully and who have had to make the same impossible choice as Dr. Kostal: risk personal health or financial ruin.

5. Unfortunately, South University is only compounding a problem that has created difficult working conditions for those with disabilities. The COVID-19 pandemic has already disproportionately affected individuals with disabilities—a protected class of individuals who represent over 25 percent of adult Americans.² Per a recent medical article:

The Coronavirus Disease 2019 (COVID-19) pandemic has killed

² CDC, Disability and Health Promotion: Disability Impacts All of Us, <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html> (last visited July 7, 2021).

many people globally and has radically changed the ways of life for many others. While politicians frequently comment that COVID-19 does not discriminate, our underlying social structures and systems mean some groups are more at risk in a pandemic context and are therefore more affected than others. This is particularly the case for people with disability, in part because they often have poorer health outcomes relating to underlying conditions, but more significantly due to discriminatory issues . . .

Sophie Yates & Helen Dickinson, Navigating Complexity in a Global Pandemic, Public Admin.

Rev. 2021 Mar 29;10.1111, <https://doi.org/10.1111/puar.13352> (emphasis added).³

6. Before the COVID-19 pandemic, the unemployment rate for individuals with disabilities was 7.3 percent. Since the COVID-19 pandemic hit, however, that number has nearly doubled.⁴ Employers cannot be allowed to disregard COVID-19-related disabilities and the requirements of the ADA as workplaces go back to in-person work, or those unemployment numbers will only increase further. Some semblance of normalcy may be returning for the majority. But for those with severe pre-existing conditions, who cannot be vaccinated, life may not be fully

³ See also Karen Weintraub & Jayne O'Donnell, COVID-19 Is a Disaster for People with Disabilities. Without 30-Year-Old Law, It Would Be Worse, USA Today (July 26, 2020, 7:00AM), <https://www.usatoday.com/story/news/health/2020/07/26/ada-turns-30-covid-hits-those-disabilities-especially-hard/5490448002/> (“This is another example of a very powerful way that the ADA is an important tool to stop some of the most insidious discrimination – literally discrimination that will have an impact on will you live or will you die” (quoting Alison Barkoff, Director of Advocacy for the Center for Public Representation)); Allison Norlian, Workers With Disabilities Disproportionately Impacted By Covid-19 Pandemic, Forbes (June 22, 2020, 9:37AM), <https://www.forbes.com/sites/allisonnorlian/2020/06/22/workers-with-disabilities-disproportionately-impacted-by-covid-19-pandemic/?sh=487685d61ad1> (“It’s the same story for workers with disabilities across the United States, many of whom were laid off, furloughed or forced to stop working because of the health implications associated with catching Covid-19. Making matters worse: when it comes to unemployment, those same individuals were already disproportionately represented in the labor market before the pandemic began.”); Nicole Baumer, The Pandemic Isn’t Over — Particularly for People with Disabilities, Harvard Health Publishing (May 25, 2021), <https://www.health.harvard.edu/blog/the-pandemic-isnt-over-particularly-for-people-with-disabilities-202105252464> (“The COVID-19 pandemic has greatly disrupted everyone’s lives. Clearly, its effects varied considerably for people of different races, ethnicities, and income levels. But what has been its impact on people with disabilities? . . . Ongoing harms caused by the pandemic have been especially evident for people with disabilities. Disruptions in education, employment, health care, and social services have been amplified.”); Tyler Edwards, Coronavirus: Disabled ‘Pushed Out’ of Post-Lockdown World, BBC News (Sept. 5, 2020), <https://www.bbc.com/news/uk-wales-54029551> (disability equality charity, Scope, “said disabled people had been ‘routinely forgotten’ in the pandemic”).

⁴ Bureau of Labor Statistics, News Release, Persons with a Disability: Labor Force Characteristics – 2020, <https://www.bls.gov/news.release/pdf/disabl.pdf> (last visited July 7, 2021).

returned to normal for years. These Americans cannot and should not be left behind by society.

7. At its core, the ADA helps ensure that people with disabilities will be afforded and treated with a level of respect and dignity in the workplace. South University, in refusing to accommodate Dr. Kostal and others during this difficult time, have turned its back on those who require the support of their employer more than anyone else.

PARTIES

8. Claimant Dr. Elizabeth Kostal, currently resides in the State of Virginia. At all relevant times, Dr. Kostal met the definition of an “employee” under all applicable statutes.

9. Respondent South University of Virginia–Member, LLC is a private university formed pursuant to the laws of Virginia. South University of Virginia–Member, LLC’s principal place of business is Virginia Beach, Virginia.

10. Respondent South University of Savannah, LLC is a private university formed pursuant to the laws of the State of Georgia. South University of Savannah, LLC is the sole member of South University of Virginia–Member, LLC. South University’s principal place of business is in Savannah, Georgia.

FACTUAL ALLEGATIONS

I. Dr. Kostal’s Hire at South University

11. Dr. Kostal is a clinically trained doctor with an additional master’s degree in Nutrition and Human Performance. She is currently in the publishing stage after a four-year Clinical Research Fellowship within the Department of Neuroendocrinology & Metabolic Disorders at Eastern Virginia Medical School.

12. South University hired Dr. Kostal in October 2019 as its Academic Program Director, Public Health and Health Sciences, South University College of Nursing and Health

Sciences, and Associate Professor, Nursing and Health Sciences.

13. She has taught courses in Human Gross Anatomy, Human Physiology, Human Pathophysiology, Epidemiology, Chemistry and Clinical Nutrition, for which she received excellent ratings from her supervisor, Dr. Donald Johnson, and her students, despite teaching virtually for the majority of her tenure due to the COVID-19 pandemic. (*See Exs. A-B*).

II. The Powerlessness of the COVID-19 Health and Safety Committee and SU’s Push to Reopen at Any Cost

14. At the beginning of the pandemic, SU established both a COVID-19 Task Force (headed by Steven K. Yoho, PhD, Chancellor of SU) and a Health and Safety Committee (the “Committee”).

15. The Task Force handled “collective decision-making regarding phases . . . , communication strategy, and implementation, including planning, training, safety precautions, supplies, and technology.”

16. The Committee’s goal was purportedly to advise the Task Force “utilizing CDC Guidelines, research, and collective experience in the treatment and prevention of infectious diseases.”

17. As the Academic Program Director for Public Health and Health Sciences, Dr. Kostal was a natural choice to participate on the Committee.

18. As a member of the Committee, Dr. Kostal observed that Dr. Yoho has been in a rush to reopen almost since the beginning of the pandemic, attempting to reopen twice—once in July and a second time in December 2020—only to be thwarted by rising COVID-19 rates.

19. On both occasions, the Committee recommended against reopening. Dr. Yoho initially ignored their guidance (which was based on science) and only capitulated when the rate of infection continued to increase (and Dr. Yoho had no other choice).

20. No doubt wishing to avoid the frustration of these prior failed attempts, Dr. Yoho insisted that the next reopening would be a “hard stop,” with no exceptions made for anyone to continue to work remotely.

21. Accordingly, Dr. Yoho ordered SU employees—but not SU’s tuition-paying students—back onto campus as of April 19, 2021.

22. The arbitrariness of this decision is on full display in the reopening announcement made on February 18, 2021. (*See* Ex. C).

23. Even though SU had prematurely announced a reopening on two prior occasions, Dr. Yoho decided to release this announcement a full *two months* before the date of projected reopening.

24. Moreover, while giving lip service to the ADA, the letter announced flatly that “we have permitted exceptions to the general requirements based on the CDC guidelines to assist our faculty and staff with childcare needs. These approvals will end on April 18, 2021 as we move forward with bringing all staff and faculty back on-campus April 19, 2021.” (*Id.*).

25. It is hard not to grasp from this announcement, first, that SU considers it a matter of grace to take public health measures to protect its employees’ health, and second, that it intended to push forward with reopening at any cost, including to its employees’ health, in order to improve its economic bottom line.

26. Dr. Yoho and SU’s management have succumbed to a fallacy in believing that, just because infections are down and a portion of the Virginia population is vaccinated, COVID-19 is no longer a health risk for those individuals with underlying conditions and/or who cannot be vaccinated. Dr. Kostal is one of those individuals.

III. Dr. Kostal's Preexisting, Severe Disabilities

27. Dr. Kostal has asthma with a history of severe bronchitis, dilated cardiomyopathy, superior vena cava syndrome, pacemaker implantation and sick sinus syndrome.

28. All of these conditions and, particularly, the last disability greatly affect her ability to (1) breathe, and (2) wear a mask for long periods of time.

29. Moreover, because of previous adverse reactions to vaccination, Dr. Kostal cannot receive the COVID-19 vaccine.

30. Individuals with sick sinus syndrome essentially have no SA node (sinoatrial nodal function in the heart).

31. The SA node is the natural pacemaker of the heart and drives the heart rate.

32. In addition, it is essentially where one obtains chronotropic ability—the ability of the heart rate to increase with increased demand, or its timing.

33. Chronotropic demand will increase the heart rate and consequently blood pressure when transitioning from sitting, to standing, to running, etc.

34. Dr. Kostal's heart does not have either ability, so, at age 24, she received her first pacemaker and subsequently a full superior vena cava reconstruction under hypothermic circulatory arrest in December of that same year.

35. Dr. Kostal relies on her pacemaker to act as the SA node, as well as to allow her to have some semblance of chronotropic function via algorithms downloaded into the device.

36. Unlike a healthy individual, when Dr. Kostal speaks while wearing a mask, her respiratory rate increases.

37. Due to an increased respiratory rate, she also expels more carbon dioxide ("CO₂") into her mask when compared to a healthy individual.

38. CO₂ is an acid and so, in terms of acid/base balance, Dr. Kostal begins to breathe in and retain more CO₂ as she continues to speak.

39. When this happens, she is creating an acid/base imbalance known as respiratory acidosis.

40. The natural correction for this would be for Dr. Kostal's heart rate and respiratory rate to increase so that she could essentially expel more CO₂ back into the atmosphere, making herself more alkaline.

41. Dr. Kostal's pacemaker and the mask, however, do not allow for the natural corrective process.

42. Moreover, Dr. Kostal's heart rate—which is controlled by the pacemaker—is based upon a small number of algorithms.

43. She has an accelerometer, which is based upon vibration and positional awareness, and a minute ventilation sensor, which calculates thoracic impedance in her lungs (the volume of air that goes in and out).

44. When Dr. Kostal speaks for lengthy periods with a mask on, however, the algorithms essentially misinterpret the data it receives and increases her heart rate to 150 beats per minute—which is the max setting on the device currently.

45. There is nothing that Dr. Kostal can do to change this.

46. This unhealthy increase in heart rate, of course, feeds upon itself and causes her respiratory rate to increase even more, which causes even more retention of CO₂, thus creating a positive feedback loop.

47. This is extremely dangerous to Dr. Kostal's health.

IV. Dr. Kostal’s Request for a Reasonable Accommodation Due to her Increased Risk of Death from COVID-19 and South University’s Illegal, Discriminatory Denial

48. Of course, Dr. Kostal knew immediately that returning to campus—and having to lecture for two hours or more with two masks on—would be dangerous.

49. Even working remotely, the COVID-19 pandemic has kept Dr. Kostal in constant fear for her life.

50. Thus, on April 15, 2021, Dr. Kostal submitted a disability accommodation request signed by her doctor, Jon Grammes, to SU’s Human Resources department (“HR”).

51. The form asked Dr. Grammes whether Dr. Kostal “has an impairment that substantially limits one or more major life activities or a record of such impairment.”

52. In response, Dr. Grammes marked the box indicating “yes.” He also indicated that “the impairment substantially limit[s] a major life activity as compared to most people in the general population” and marked “breathing” as the major life activity.

53. Finally, Dr. Grammes explained that “[v]accination has not been recommended for this patient due to previous adverse reactions.”

54. For these reasons, Dr. Grammes wrote that “Dr. Kostal represents a high-risk category for life threatening complications” from COVID-19 infection, and that she should thus continue to work from home “until risk is fully mitigated.” (*See Ex. D.*)

55. Dr. Grammes’ conclusion—that Dr. Kostal should be permitted to teach from home—is not surprising.

56. The CDC, for example, explicitly lists both asthma and cardiomyopathies—two of Dr. Kostal’s chronic conditions—as conditions that are more likely to cause severe illness from

complications with COVID-19.⁵

57. HR's response came less than 24 hours later without any interactive process or discussion.

58. The contents of this letter, sent by Hilary Donahoe, Senior Benefits Administrator of HR, are astounding in their callous, bureaucratic disregard for the life of a valued—and beloved—employee.

59. First, the letter wrongly determined that Dr. Kostal did not have a disability: “your form did not outline a disability consistent with an approval for remote working conditions.” (*See Ex. E*).

60. Asthma and chronic heart conditions, however, would have qualified as ADA disabilities even in normal times. During the COVID-19 era, in particular, a pre-existing condition that increases the risk of complications with COVID-19 is an obvious disability.

61. Second, the letter outright admitted that SU gave no serious consideration to the accommodation request, but summarily denied it due to a blanket policy against accommodations: “Please note that remote working approvals are no longer being issued to mitigate the risk of COVID19.” (*Ex. E*).

62. In submitting her request, Dr. Kostal was not just trying “to mitigate the risk of COVID19.” Dr. Kostal’s request came from a desire to preserve her life.

63. Third, the letter outright admitted that SU was not only denying Dr. Kostal’s request but also had denied every previous accommodation request brought by other employees:

Your approval for remote working conditions will end along with all COVID19 South University granted remote work approvals on 4/18/2021 to remain consistent with the faculty and staff members

⁵ CDC, People with Certain Medical Conditions, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited July 1, 2021).

who have been evaluated under the ADA for the campus return taking place on 4/19/2021.

(*Id.*).

64. Finally, as though aiming to pack as much disregard and insult as possible into the one-page letter, Ms. Donahoe closed by referring Dr. Kostal to the “Return to Campus Staff and Faculty Guidelines”—that Dr. Kostal had herself helped author—without any acknowledgment of that fact. (*Id.*).

65. Dr. Kostal was distraught by SU’s decision. She responded:

What you are essentially now asking me to do is to make a decision, that either way, bears a negative outcome. You are asking me to determine for my family whether my actual physical health is more important than my financial health and potentially vice versa.

(*See Ex. F*). Dr. Kostal also referenced the Department of Justice as her next step.

66. Attuned to the threat of legal action, Cathy Girardeau, Director of HR, stepped in to argue with the opinion of Dr. Kostal’s treating physician and Dr. Kostal—a clinically-trained doctor and public health professor, respectively.

67. Ms. Girardeau’s response bears close analysis since, in its attempt to find a legal justification to head off Dr. Kostal’s threat of legal action, it inadvertently revealed the absolute lack of any legal foundation for SU’s actions.

68. The letter begins: “We understand your position, but point out we have accommodated you and others with remote work opportunities for over one year during the pandemic.” (*See Ex. G*).

69. Of course, the general closing of American society, including all higher education institutions, was not an ADA “accommodation,” it was a public health response mandated by state authority, under the guidance of the CDC.

70. Ms. Girardeau then attempted to build SU's case that granting Dr. Kostal's request would make it impossible for her to fulfill certain job functions: "In our view, you cannot adequately perform the full spectrum of job duties contained in your job description via remote work, including partnering with Campus leadership, admissions, and academic staff."

71. Faculty members, however, had been remote teaching for over a year without issue, and students continue to learn from home.

72. SU also did not explain in any way how remote work would make it impossible for Dr. Kostal to partner with "leadership, admissions, and academic staff." The statement was not only vague, but it also verged on an outright lie, since all meetings continue even now to be held by video, including meetings held by Dr. Yoho. For instance, as recently as May 13th, Dr. Yoho sent SU faculty an invitation to a "virtual town hall." (*See Ex. H.*)

73. It is hard to credit that Dr. Kostal would be unable to interact with "leadership" or "the community" virtually when the community's leadership continues to hold all meetings virtually.

74. A video call from campus is the same for all intents and purposes as a video call from off-campus.

75. Next, Ms. Girardeau wrote, "you cannot effectively work remotely while promoting your program in the community, especially under circumstances where state and local government have eased COVID restrictions and our business partners have returned to the workplace in person."

76. Again, these community outreach communications have been held remotely for over a year without issue and, even now, continue via video call.

77. Finally, Ms. Girardeau quoted the Equal Employment Opportunity Commission's

(“EEOC”) guidance for granting telework as a reasonable accommodation after reopening, highlighting the essential function argument, but ignoring the rest, which states:

The fact that an employer . . . chose to permit telework, does not mean . . . that telework is always a feasible accommodation, or that it does not pose an undue hardship. **These are fact-specific determinations.** The employer has no obligation under the ADA to refrain from restoring all of an employee’s essential duties at such time as it chooses to restore the prior work arrangement, **and then evaluating any requests for continued or new accommodations under the usual ADA rules.**

(*Id.* (emphasis added)).

78. The guidelines only say that an employer need not *necessarily* grant telework going forward, which has always been the rule under the ADA.

79. The guidelines do not suspend the usual rules for evaluating a reasonable accommodation request or justify the blanket denial of all such requests (nor could they, absent an act of Congress).

80. Indeed, the guidance stipulates the exact opposite of SU’s approach, by requiring that all such requests continue to be given fair, individualized consideration.

81. And, more importantly, in-person attendance is simply not an essential function of Dr. Kostal’s job. (*See Ex. I.*)

82. As evidenced by the last year and three months, everything that was done in person can easily be done remotely.

83. Dr. Kostal’s students continued to report in their reviews that they find Dr. Kostal to be both brilliant as a lecturer and supportive as a mentor. (*See Ex. B.*)

84. Indeed, in a review completed just this last February, Dr. Kostal’s supervisor, Dr. Donald Johnson, gave her an “exemplary” rating, the highest possible, in his assessment of Dr. Kostal’s effectiveness and classroom management.

85. In particular, he wrote: “[I] want to say that I have seen so many students applaud Dr. Kostal’s class and how much she has helped them in these very difficult science courses.”

86. Dr. Johnson likewise rated Dr. Kostal as “exemplary” in her delivery of content, writing, “Dr. Kostal has received so many laudable comments from students in her class. All of her students respect and are better served by having her as a faculty member.” (*See Ex. A*).

87. Moreover, SU has long experience with distance learning.

88. As part of its course offering, it has, for several years, offered online classes to attract working professionals.

89. In this profitable context, SU boasts to prospective students that “our faculty will hold you to the same high standards of academic excellence that we have for all South University students.”⁶

90. At least when it is profitable and convenient for SU, the University has no problem holding out to the world that it sees no difference between its in-person and its online courses.

91. Because online learning is so woven into the identity of SU, Dr. Kostal already owns a sophisticated studio, replete with commercial-grade internet access and a lectern, that she uses to hold remote class and ad hoc study sessions.

92. SU in general, and Dr. Kostal, in particular, is well adapted to online teaching.

93. Almost absurdly, Ms. Girardeau finished her letter by saying: “We are willing to make the accommodation for you to teach your courses virtually for the remainder of this term from the campus.” (*Ex. G*).

94. As discussed above, this is not an accommodation, it is simply a reiteration of SU’s

⁶ South University, Online Student Experience, <https://www.southuniversity.edu/online/student-experience> (last visited July 7, 2021).

current instruction to all teachers to return to campus.

95. This “accommodation” is also meaningless, as no on-campus lectures are taking place within Dr. Kostal’s department, and all lectures are by video anyway.

V. **South University Forces Dr. Kostal to Return to Work, at Great Risk to Her Life**

96. After SU’s rejection of her request for an accommodation, Dr. Kostal appealed to Dr. Johnson and her Department Chair, Dr. Jason Robertson, for help advocating her position.

97. They did so—of course, via video—to Dr. Brian McAuley, who relayed the information to Dr. Yoho.

98. In response, Dr. Yoho made no attempt to maintain any pretext that Dr. Kostal’s request had been given its legal due, and simply decided that he could not make an exception for Dr. Kostal.

99. In particular, it was said that the University was worried about “opening Pandora’s box,” and that, if an exception was granted for Dr. Kostal, then many other exceptions would have to be made as well.

100. Dr. Johnson then pressed Ms. Donahoe on how many accommodation requests had been granted to date.

101. Ms. Donahoe admitted that none had been granted.

102. Again, these responses reiterate SU’s illegal, one-size-fits-all approach to accommodation requests.

103. Dr. Kostal, finally, was left with no choice. In order to keep her career and her job, she was forced to return on April 19, 2021, and run the extreme risk to her health posed by being in the workplace.

104. Dr. Kostal was forced to lecture in her office with her door closed while wearing

two masks.

105. Outrageously, her office was situated near the housing for nursing faculty and nursing students, who come into daily contact with COVID-19 patients.

106. On campus, she regularly encountered students and colleagues walking around without masks or without proper mask usage, including many who are working with individuals infected with COVID-19.

107. For instance, a favorite student of Dr. Kostal's walked up behind her to give her a hug, ignoring all social distancing requirements.

108. Accordingly, for fear of infection, Dr. Kostal was unable to remove her masks during the day, even while in her office, making it impossible to eat, drink or even use the bathroom.

109. To drink, she was forced to go to her car where she kept a water bottle, or otherwise end the day dehydrated.

110. She has been, and still is, suffering with intense physical and psychological effects due to SU's violation of the law.

VI. South University's Most Recent Actions with Respect to the COVID-19 Pandemic Prove Its Continued Disregard for Employee Health and Applicable Law

111. Though circumstances may be more promising than in July or December, wishful thinking cannot end a pandemic. As of the date of this complaint, only approximately 50 percent of the population of Virginia is fully vaccinated.⁷

112. And, as with all vaccines, the COVID-19 vaccines cannot prevent all outbreaks.

113. For example, on May 4, 2021, a fully vaccinated faculty member working in one

⁷ See Virginia Dep't of Health, COVID-19 Vaccine Summary, <https://www.vdh.virginia.gov/coronavirus/covid-19-vaccine-summary/> (last visited July 7, 2021).

of SU's labs tested positive after coming to work.

114. She exposed over 40 individuals to COVID-19. Had Dr. Kostal been exposed to this individual, she could have died.

115. Gina Scarborough, Dean of the College of Health Professions and the head of the Committee, ordered that anyone who had been in contact with the infected person should quarantine, but added "I am not sure how HR is handling employees in this situation." (See Ex. J).

116. In other words, Ms. Scarborough was unable to require medical quarantine for employees without the approval of HR—non-medical bureaucrats with a known institutional interest in arbitrarily keeping employees on campus.

117. Then, on May 25, 2021, the Committee voted, four versus two, to end social distancing and lift the mask mandate for both vaccinated and non-vaccinated individuals on campus (Dr. Kostal and one other person voted against).

118. This will all be done via the honor system, as SU is not collecting vaccination information from employees or students, even after multiple members admitted that many were not even complying with current COVID-19 protocols.

119. That same day, Ms. Scarborough also admitted to Dr. Kostal that at least one SU campus was allowing its (non-disabled) faculty to work from home during mandatory quarantine periods:

It is not official but one of the campus presidents requested leniency for allowing work remotely due to isolation, HR allowed the campus to make the decision. That being said, it is certain that HR will not allow workers to continue working entirely remotely. You did not hear it from me [smiling emoji]

(See Ex. K).

120. Of course, employees with disabilities are not given the same consideration.

VII. Dr. Kostal Defends Her Right to Accommodation and Faces Retaliation

121. On May 27, 2021, facing intolerable working conditions, Dr. Kostal, through counsel, sent a letter to Dr. Yoho and South University, outlining the egregious disability discrimination she had faced to date.

122. Almost immediately, SU, through its counsel, conceded that it would be reasonable to allow Dr. Kostal to continue working remotely until June 4, 2021. In further correspondence dated June 4, 2021, SU granted Dr. Kostal an accommodation for remote work until July 2, 2021. (*See Ex. L.*)

123. In doing so, SU made three remarkable admissions. First, it admitted that everything any SU official had previously told Dr. Kostal was incorrect, by granting her remote work as an accommodation. Second, it once again signaled that it would not engage in an interactive process. Third, it showed a continued willingness to shape reality according to its wishes rather than according to facts. The letter is worth quoting directly to demonstrate its various admissions and veiled threats.

This letter is to revisit and clarify the response to your request for a reasonable accommodation to work remotely to perform the essential duties of your role as Academic Program Director for the Public Health program.

We have temporarily granted your request for remote working arrangements, to be re-visited and reconsidered every 30 days . . .

As the pandemic progresses, vaccinations increase, and cases decline. Restrictions have been fully lifted in the state of Virginia. From the standpoint of public health officials and government officials in Virginia, there are no impediments to employees returning to the workplace. The country is looking forward to reaching herd immunity in the near future with a 70% vaccination rate. Our president expects this to be reached as early as the 4th of July holiday, at which time we expect the US government to declare

the pandemic-related emergency over. According to published data, Virginia is expected to be at a vaccination rate of approximately 75% by early July 2021 . . .

For these reasons, we are willing to extend your remote working conditions as an accommodation for 30 days through 7/2/2021. At that point, we will re-evaluate your performance, the status of your medical condition, and the state of the pandemic with government and public health regulatory bodies . . . We are willing to consider extension of the 30-day periods of remote work dependent on guidance from public health and governmental authorities as well as your own medical providers.

Summer of 2021 is a critical time in program development. We are expecting to emphasize student recruitment and community involvement, which is key to the program director role. We also plan to transition more courses back to campus as students return, which will require in person student counseling and instruction.

If you wish to continue remote working conditions after 7/4/2021, we will require an updated medical inquiry form due by 6/29/2021 that also indicates your reasoning for being unable to be vaccinated. At that time, we may also consider you for teaching or non-managerial roles that may be better suited for working remotely.

(Ex. L).

124. The letter signals that SU will continue not to engage in an interactive process as required by applicable law. For instance, it does not set forth any detail about the functions of Dr. Kostal's job that require in-person presence, nor does it suggest any ways that those functions may be isolated or altered to reasonably accommodate Dr. Kostal's disability. Instead, it continues to speak in a dichotomy of full-time remote work or full-time in-person work.

125. It also makes no attempt to seriously engage Dr. Kostal's disabilities or consider how they might be accommodated. Thus, it simply continues to implement SU's policy of forcing its employees back to campus for all purposes and just as clearly does not comport with the requirements of the ADA.

126. To enforce its policy of in-person-or-bust, the letter retaliates against Dr. Kostal in

threatening to reduce Dr. Kostal's job responsibilities unless she returns to full-time in-person work.

127. In sum, the letter makes clear that, according to SU, the country will reopen on July 4, 2021, and that, if Dr. Kostal is left behind, it will be her own fault. This is exactly the sort of discriminatory, unfair treatment the ADA is designed to protect against.

128. Employers cannot be allowed to disregard COVID-19-related disabilities and the ADA because they wish to pretend the world is back to normal. Normalcy may be returning for the majority. But for those with severe pre-existing conditions who cannot be vaccinated, life may not be fully returned to normal for years. These Americans should not be left behind by society.

129. If SU goes unpunished, Dr. Kostal's experience will become a common one, with Americans with disabilities, at best, being forced to self-segregate, eat and drink in isolation and remain in constant fear of bodily harm and, at worst, be forced out of the workforce. In short, disabled Americans will become second-class citizens.

Exhibit A

Anniversary Performance Review

Employee: **Elizabeth Kostal**
 Title: **Allied & Public Health - Academic Program Dir - C (SU)**
 Manager: **Donald Johnson**

Period: 10/7/2019 - 10/6/2020

Review Completed Date: 2/10/2021

Elizabeth Kostal's Avg. Rating **3.05 Exceeds Performance Expectations**Donald Johnson's Avg. Rating **3.27 Exceeds Performance Expectations**

Goal

Elizabeth's Avg. Rating
3 Meets Performance Expectations

Donald's Avg. Rating
3 Meets Performance Expectations

1. Attendance at New Student Orientation

Attend NSO when you have new students in attendance

Elizabeth's Rating
3 Meets Performance Expectations
 Within the past year I have been able to attend 6 separate student orientation sessions. This term is the first term that I have not been on academic overload and this factor will allow greater flexibility within my schedule.

Donald's Rating
3 Meets Performance Expectations
 Concur with Elizabeth's comments, she is a very conscientious program director/faculty and is quite in tune with her students.

Competency

Elizabeth's Avg. Rating
Exemplary

Donald's Avg. Rating
Exemplary

1. Faculty Development Activities

Faculty Development Activities

- Behaviors**
- **Completes professional development and in-service activities each year as outlined in the Faculty Supplement**
 - **Participates in faculty development workshops or educational sessions.**
 - **Engages in required annual faculty development activities to enhance teaching skills.**

Elizabeth's Rating
Exemplary
 I am currently the Chair of the Undergraduate Curriculum Committee, as well as sit on the Assessments Committee and the COVID-19 Task force for Health & Safety. In addition to the previous, I attend bi-weekly Program Director meetings across all campuses, as well as attend bi-weekly one-one sessions with my Department Chair. These combined components greatly add to both my academic and management development.

Donald's Rating
Exemplary
 Elizabeth is used quite extensively by her college chair and as she stated chairs the curriculum committee and serves as an instructional specialist across the system.

2. Service/Administration-Scholarship

Demonstrates a commitment to scholarship

- Behaviors**
- **Scholarship could include activities such as:**
 - Engages in scholarly activities that contribute to the field of study and enhance the learning environment, which may include journal articles, books, conference presentations, or grant writing.
 - Remains current with continuing education and licensure requirements
 - Attends trainings to learn new technologies.
 - Engages in other scholarly and professional activities in field of expertise as identified in the Faculty Supplement.
 - **Stays current in his or her field of expertise and engages in activities to improve teaching and learning.**

Elizabeth's Rating
Approaches Proficiency

My academic teaching schedule from term to term is rather time consuming. This, along with committees in which I attend, limits my ability for singular academic scholarship. In the future, I would love to engage within research, as well as contribute to academic writing.

Dayforce

Donald's Rating
Proficient

Given the nature of our university I would count Elizabeth's community activites and diligence/activity with her college as scholarly activites.

3. Teaching Effectiveness-Assessment of Student Performance

Demonstrates effective and consistent grading, using grading criteria such as rubrics

Behaviors

- **Provides individualized and substantive feedback for each student**
- **Uses other assessment tools as appropriate to assist student progress (i.e., pre-tests, FAQs, etc.).**
- **Identifies errors, guidance for correction, and provision of supplementary resources.**
- **Provides clear, timely, and consistent feedback in grading.**

Elizabeth's Rating
Proficient

The Fall 2020 term has been a game-changer for me in terms of access to technology. I have been able to utilize performance tools within my Pathophysiology course that allows for me to gauge both conceptual and true overall synthesis of material. The learning experience from each term allows for me to adapt, improve and to deliver content more effectively.

Donald's Rating
Proficient

Concur

4. Teaching Effectiveness-Classroom Management

Effectively communicates and enforces schools policies and procedures such as conduct, academic integrity, grading, etc

Behaviors

- **Demonstrates timeliness in posting attendance, submitting grades, and providing feedback to students.**
- **Designs and delivers instruction in alignment with the South University model.**
- **Promotes student success by showing flexibility and exhibiting a passion for teaching and students.**
- **Practices effective outreach to at-risk and/or absent students.**
- **Maintains classroom decorum and student interaction to maximize student learning/success.**
- **Manages the education process to ensure a positive educational experience.**
- **Utilizes available University resources to effectively reinforce student learning and promote student success (e.g., refers students to tutoring, writing center, library services).**
- **Manages the learning environment by keeping accurate records and enforcing academic policies consistent with the University, College/School, Campus, or Online Division, such as student conduct, academic integrity, grading, etc.**

Elizabeth's Rating
Proficient

I am truly student oriented, but also believe that there are no shortcuts to true understanding of material. Academic integrity is extremely important to me to be able to maintain the value of the classroom and the value of their completed degree. With that, student compassion, understanding and flexibility are practiced within my classroom and encouraged with my faculty.

Donald's Rating
Exemplary

Concur and want to say that I have seen so many students applaud Dr. Kostal's class and how much she has helped them in these very difficult science courses.

5. Teaching Effectiveness-Design & Delivery of Content

Design and Delivery of Content

Behaviors

- **Delivers course content and programmatic or student assessment (e.g., Learning Outcomes Manager) consistent with ACOs.**
- **Ensures students are mastering the student learning objectives of the course**
- **IDEA score ratings reflect expected performance levels**
- **Demonstrates subject matter expertise and accuracy in teaching activities and when providing feedback to students**
- **Provides real life industry experience and references appropriate research in the classroom while facilitating effective/discussion/exploration of the course content**

- Demonstrates an ability to communicate academic and complex material in an engaging and effective manner**

Elizabeth's Rating

Proficient

Please see the above comments for #2. Each term is an opportunity to learn and grow within the classroom.

Donald's Rating

Exemplary

Dr. Kostal has received so many laudable comments from students in her class. All of her students respect and are better served by having her as a faculty member.

6. Teaching Effectiveness-Effective Student Communication & Feedback

Effective Student Communication and Feedback

Behaviors

- In Classroom Provides and participates in discussion-based activities within the classroom**
- Effectively engages students, encourages peer-to-peer learning and participation, and guides discussions**
- Maintains positive, professional, consistent, and effective communication with students at all times.**
- Maintains office hours and is accessible for other one-on-one communication with students.**
- Receives student feedback and seeks opportunities to improve based on feedback**
- Outside Classroom practices effective outreach to at-risk and/or absent students**

Elizabeth's Rating

Proficient

These aspects naturally align within my classroom. Students receive constant feedback, recommendations and a different perspective in approaching material. Within our VR/live model, we do not participate in online discussions.

Donald's Rating

Exemplary

Dr. Kostal has received so many laudable comments from students in her class. All of her students respect and are better served by having her as a faculty member. I have personally seen many of these comments and it is heart-warming to see the light coming on for them in these difficult science courses.

7. Service/Administration-Personnel (PD)

Personnel (PD)

Behaviors

- Adheres to university policies described in the Employee Handbook, job description, or other separate guidelines**
- Interviews and recommends candidates for Faculty positions wthin the Program on the campus.**
- Ensures that full-time and adjunct Faculty evaluations are completed in a timely manner. Evaluations evidence an appropriate analysis of faculty data, documents, while outlining areas of strength and opportunities for growth.**
Ensures that full-time and adjunct Faculty evaluations (e.g., course observations and annual Faculty evaluations) are completed in a timely manner. Evaluations evidence an appropriate analysis of faculty data, documents, while outlining areas of strength and opportunities for growth.
- Provides regular updates to supervisors regarding the performance of direct reports. Communication is clear and well-documented.**
Provides regular updates to supervisors regarding the performance of direct reports. Communication is clear and well-documented.
- Ensures faculty credentialing documentation is current and meets university and accreditation requirements. that direct reports meet the required course load for their contract.**
Ensures faculty credentialing documentation is current and meets university and accreditation requirements. that direct reports meet the required course load for their contract.
- Ensures that student and Faculty problems requiring academic actions are resolved according to South University policies and procedures. Advocates for Professional Development of Faculty.**
Ensures that student and Faculty problems requiring academic actions are resolved according to South University policies and procedures. Advocates for Professional Development of Faculty.
- Trains, manages, and leads a designated group of Faculty according to the policies and procedures of the university, supervising daily operations, including the recruiting and scheduling of Faculty.**
Trains, manages, and leads a designated group of Faculty according to the policies and procedures of the university, supervising daily operations, including the recruiting and scheduling of Faculty.

Elizabeth's Rating

Proficient

As with the classroom, continual improvement is a sign of growth and learning.

Donald's Rating

Proficient

Concur

8. Service/Administration-Participates in College/School Subcommittee (PD)

Participates in College/School Subcommittee (PD)

Behaviors

- Responsible for providing appropriate support for the accurate completion and timely submission of internal/external reports (e.g., OSAIRS, Accreditation) and assessment processes as necessary.**
Responsible for providing appropriate support for the accurate completion and timely submission of internal/external reports (e.g., OSAIRS, Accreditation) and assessment processes as necessary.
- Serves as a liaison between Faculty and University Administration.**
Serves as a liaison between Faculty and University Administration.
- Communicates consistently and effectively with Supervisors, University Administrators, Faculty and Other South University Departments.**
Communicates consistently and effectively with Supervisors, University Administrators, Faculty and Other South University Departments.
- Supports College/School and University initiatives as requested by the College/School or University Administration.**
Supports College/School and University initiatives as requested by the College/School or University Administration.

Elizabeth's Rating

Donald's Rating

Exemplary

I participate to a high-level on academic/ancillary committees that serve South University and the growth and development within my role at South University.

Exemplary

I could not agree more, please refer to her Chair's comments in the comments section below that validates this rating.

9. Service/Administration-Curriculum & Operations (PD)

Service/Administration-Curriculum & Operations (PD)

Behaviors

- Serves as academic advisor, which may include scheduling of classes in an effective and timely manner. Plays an integral role in the student recruitment process and growth of assigned programs.**
Serves as academic advisor, which may include scheduling of classes in an effective and timely manner. Plays an integral role in the student recruitment process and growth of assigned programs.
- Administers the program/department initiatives designed to achieve student outcomes and campus/community relations.**
Administers the program/department initiatives designed to achieve student outcomes and campus/community relations.
- Manages the operations of student professional organizations, as appropriate by program.**
Manages the operations of student professional organizations, as appropriate by program.
- Creates and manages program budget process by communicating with campus leadership (on ground only).**
Creates and manages program budget process by communicating with campus leadership (on ground only).
- Remains in compliance with South University's academic policies and procedures, educational policies, both SACSCOC and programmatic accreditation standards, and state agency regulations.**
Remains in compliance with South University's academic policies and procedures, educational policies, both SACSCOC and programmatic accreditation standards, and state agency regulations.
- Takes ownership of program assessment plans, provides methods of improvement, and regularly reviews plan/data.**
Takes ownership of program assessment plans, provides methods of improvement, and regularly reviews plan/data.
- Ensures program and university SLOs are met. Ensures full implementation of Administrative Course Outlines (ACOs).**
Ensures program and university SLOs are met. Ensures full implementation of Administrative Course Outlines (ACOs).
- Supports the curriculum development and revision process regarding the program. Participates in and leads (as appropriate) Department and other meetings.**
Supports the curriculum development and revision process regarding the program. Participates in and leads (as appropriate) Department and other meetings.
- Oversees the Program Advisory Committee (PAC) process including selecting members and facilitating meetings at least twice a year.**
Oversees the Program Advisory Committee (PAC) process including selecting members and facilitating meetings at least twice a year.

Elizabeth's Rating

Donald's Rating

Proficient

Some of the behaviors listed within this category are not directly handled by my role, but I do assist within a number of these categories.

Proficient

Dr. Kostal is always prompt with her schedule and takes the academic counselors advice on best times to book classes as to minimize non-attendance.

10. Organizational Outreach

Community Outreach Activities

Behaviors

- Establishes strong, consistent and positive relationships with discipline-related organizations (professional organizations, corporations, community college departments, high schools, community service organizations)**
- Develops, nurtures and regularly convenes a Program Advisory Committee to advance the program educational sessions.**
- Maintains consistent communication with partner organizations**
- Develops partnership agreements, including block transfer agreements, tuition discounts, on-site educational opportunities, etc.**

Elizabeth's Rating

Proficient

The past 8 months have been unprecedented in terms of the pandemic and community involvement. Continuing to build internship/preceptor opportunities has been challenging as most sites are currently not accepting students. This is a component in which I hope to continue to build as sites begin to re-open.

Dayforce

Donald's Rating

Exemplary

Dr. Kostal's comments say it all, she is a local expert and I see great things coming from the partnership between her and our DCOD in 2021.

11. Community Engagement

Provides opportunities to promote the program to the Campus' community

Behaviors

- **Develops proposals for on-campus and off-site activities to expose organizations to South University**
- **Partners with Campus leadership to ensure events take place on a regular basis**
- **Personally staff events to provide content-related support, in cooperation with Admissions staff**

Elizabeth's Rating

Proficient

This is an area in which we are currently building with the alignment of- Working on adding experiential learning for her PH students by having our new Director of Community Outreach and Development. Please additionally see comments for #10.

Donald's Rating

Proficient

them help deliver COVID vaccine.
- Is holding virtual program sessions for new students
-

Overall Comments

Elizabeth's Comments

Donald's Comments

Below are comments from her Public Health Chair

College Engagement:

Elizabeth is always willing to go above and beyond in helping to work on projects for the College. She provides valuable input in matters related to curriculum, student engagement, and new initiatives. At this time Elizabeth is the chair of the Public Health and Health Sciences Undergraduate Curriculum Committee. In this role she is helping to lead the review of the Academic Course Outlines for all courses in the Associates and Bachelors programs. At the same time, Elizabeth has been working to pilot a new technology-based program in her Pathophysiology program through our textbook company to provide individualized student feedback and instruction. This will help to inform potential implementation of new products embedded in our courses that will aid in both campus-based, online, and virtual education.

Student Focus:

Dr. Kostal is very student focused. A consummate student advocate, she works very hard to assist her students to learn material within her classes. In addition, she seeks ways to engage students in being successful outside the classroom which aids in increasing student retention. This continues in her focus in helping engage students in ways to be engaged with the public health program and within their communities. Although Covid-19 has lessened our ability to engage in student outreach, Dr. Kostal looks for opportunities to expose students to ways in which they can use their classroom experience.

Overall:

Elizabeth is always willing to lend a helping hand. She is willing to provide new prospective and lead new initiatives as needed. This helps to make her a valuable team member.

Signature

Employee: Elizabeth Kostal

Manager: Donald Johnson

2/10/2021

Signature

Elizabeth Kostal's Comments

2/10/2021

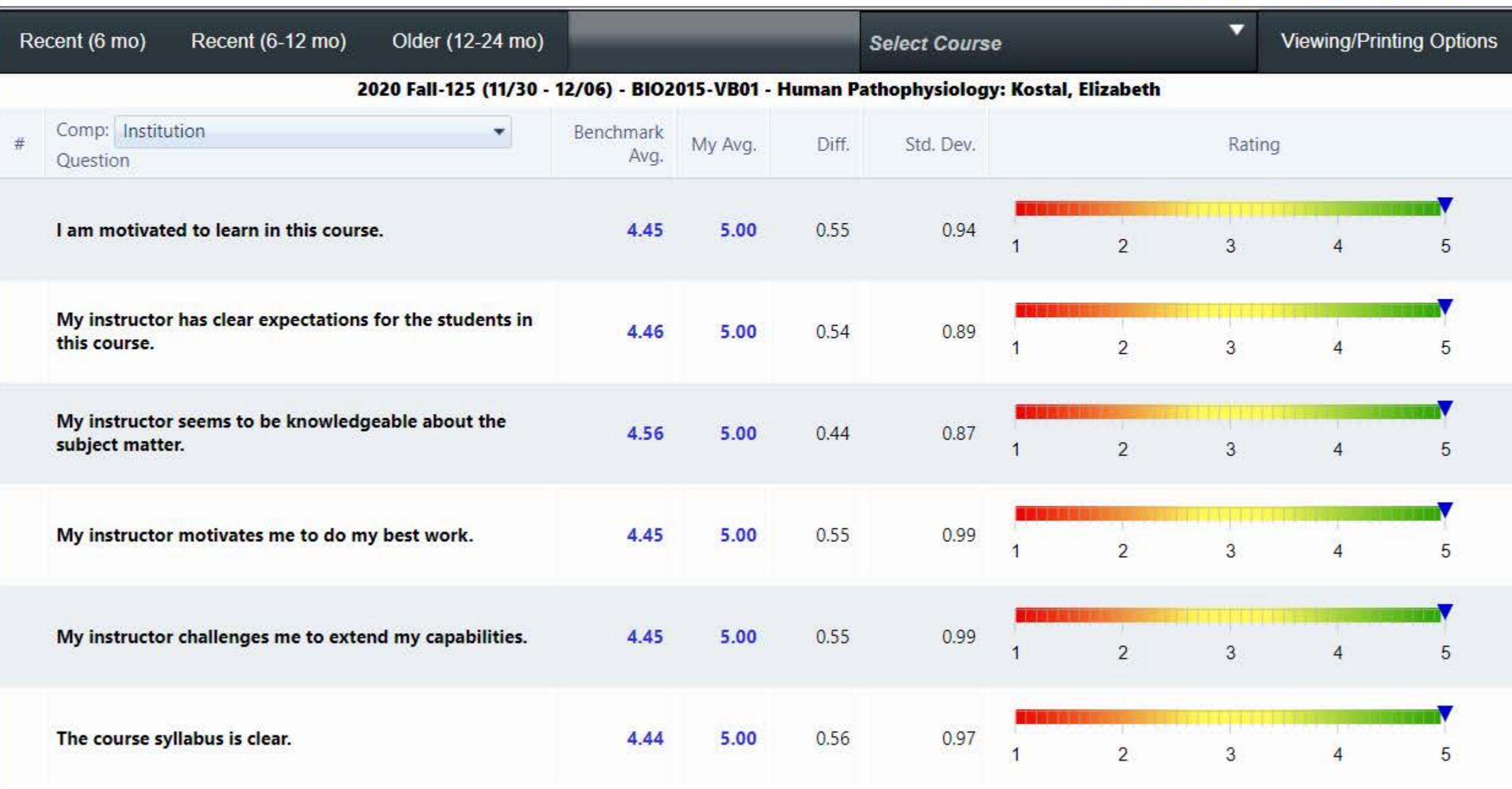
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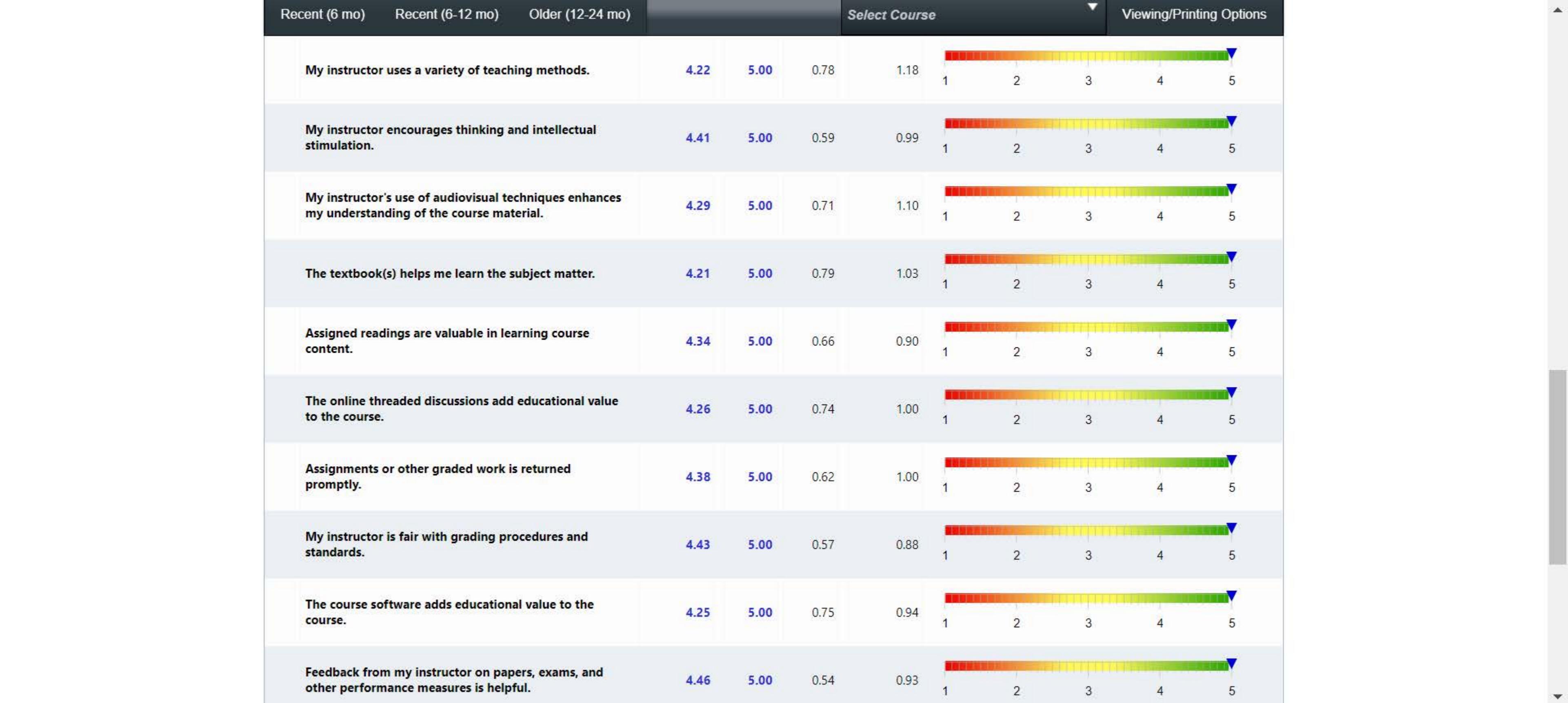
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Donald Johnson's Comments

Exhibit B





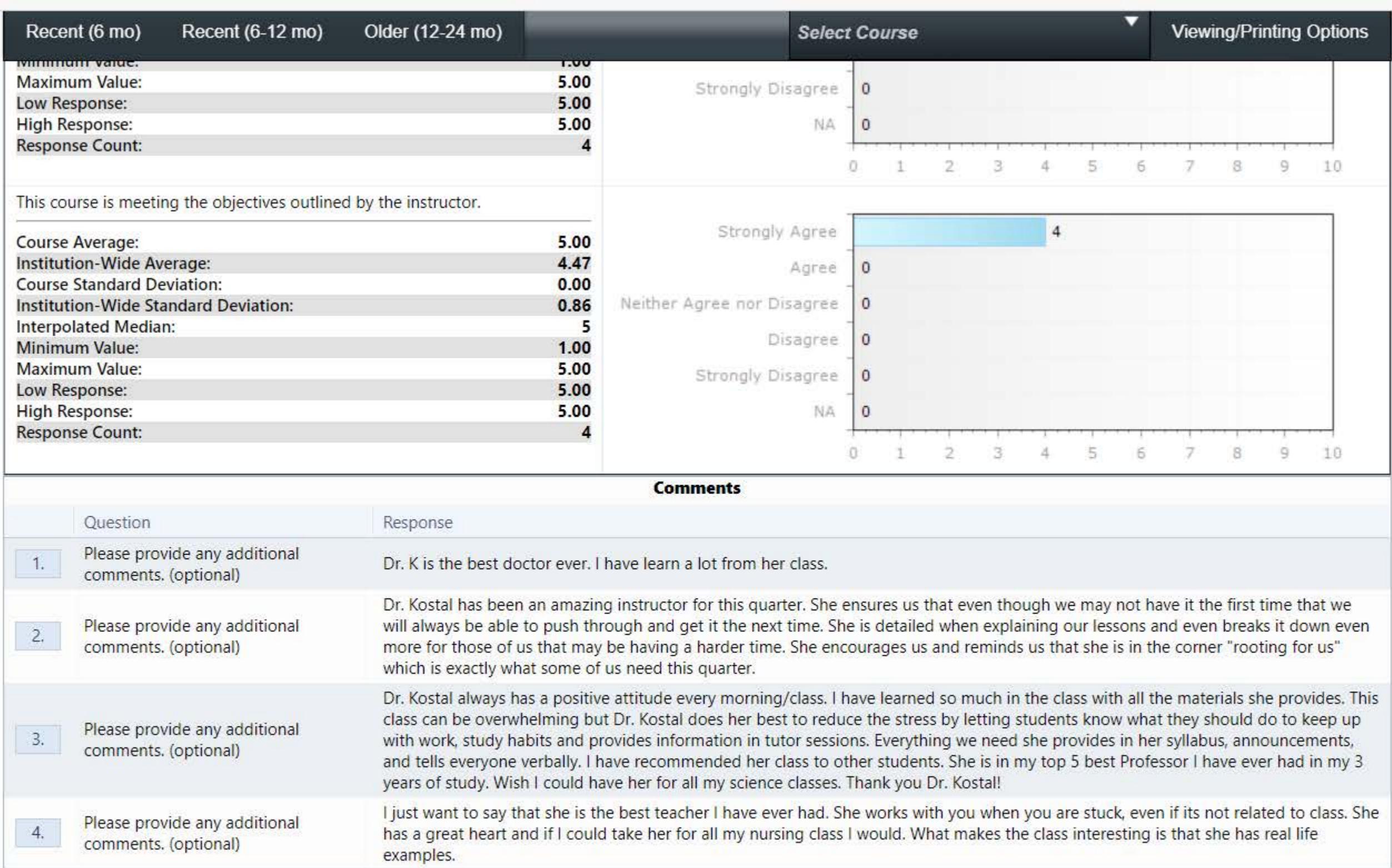


Recent (6 mo)	Recent (6-12 mo)	Older (12-24 mo)	Select Course	Viewing/Printing Options
promptly.			1 2 3 4 5	
My instructor is fair with grading procedures and standards.	4.43	5.00	0.57	0.88 1 2 3 4 5
The course software adds educational value to the course.	4.25	5.00	0.75	0.94 1 2 3 4 5
Feedback from my instructor on papers, exams, and other performance measures is helpful.	4.46	5.00	0.54	0.93 1 2 3 4 5
My instructor's standards for evaluating my work are clear and consistently applied.	4.44	5.00	0.56	0.93 1 2 3 4 5
I am putting a lot of effort into this course.	4.59	5.00		0.71 1 2 3 4 5
The amount of work in this course is appropriate for the credit received.	4.41	5.00	0.59	0.94 1 2 3 4 5
So far, I would rate the quality of instruction in this course as excellent.	4.34	5.00	0.66	1.07 1 2 3 4 5
This course is meeting the objectives outlined by the instructor.	4.47	5.00	0.53	0.86 1 2 3 4 5
All Scored Questions (N=4)		5.00		

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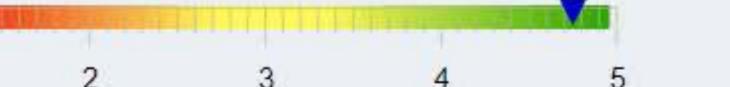
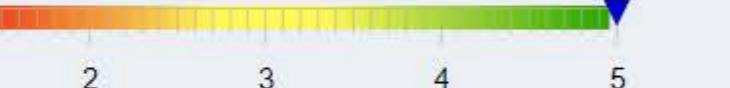
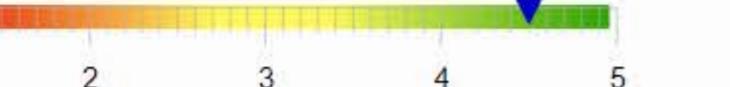
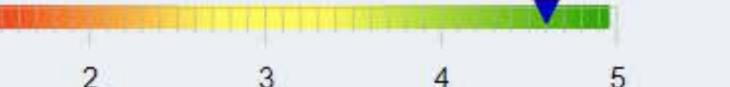
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Recent (6 mo)			Recent (6-12 mo)			Older (12-24 mo)			Select Course			Viewing/Printing Options						
2021 Winter-125 (3/6 - 3/12) - NTR2050-VB00 - Nutrition: Kostal, Elizabeth																		
#	Comp: Institution Question	Benchmark Avg.	My Avg.	Diff.	Std. Dev.	Rating												
	I am motivated to learn in this course.	4.58	4.60	0.02	0.80	1	2	3	4	5								
	My instructor has clear expectations for the students in this course.	4.55	4.75	0.20	0.78	1	2	3	4	5								
	My instructor seems to be knowledgeable about the subject matter.	4.69	5.00	0.31	0.61	1	2	3	4	5								
	My instructor motivates me to do my best work.	4.58	4.60	0.02	0.83	1	2	3	4	5								
	My instructor challenges me to extend my capabilities.	4.54	4.75	0.21	0.86	1	2	3	4	5								
	The course syllabus is clear.	4.52	4.80	0.28	0.86	1	2	3	4	5								



Recent (6 mo)	Recent (6-12 mo)	Older (12-24 mo)	Select Course		Viewing/Printing Options
			4.39	4.75	0.36
My instructor uses a variety of teaching methods.			1.02		
			1	2	3
My instructor encourages thinking and intellectual stimulation.	4.56	4.75	0.19	0.84	
			1	2	3
My instructor's use of audiovisual techniques enhances my understanding of the course material.	4.47	4.75	0.28	0.93	
			1	2	3
The textbook(s) helps me learn the subject matter.	4.35	3.80	(0.55)	0.91	
			1	2	3
Assigned readings are valuable in learning course content.	4.42	4.00	(0.42)	0.87	
			1	2	3
The online threaded discussions add educational value to the course.	4.31	5.00	0.69	0.91	
			1	2	3
Assignments or other graded work is returned promptly.	4.54	4.60	0.06	0.80	
			1	2	3
My instructor is fair with grading procedures and standards.	4.50	4.75	0.25	0.87	
			1	2	3
The course software adds educational value to the course.	4.46	4.50	0.04	0.83	
			1	2	3
Feedback from my instructor on papers, exams, and other performance measures is helpful.	4.52	4.60	0.08	0.89	
			1	2	3

Recent (6 mo)	Recent (6-12 mo)	Older (12-24 mo)	Select Course	Viewing/Printing Options
promptly.			1 2 3 4 5	
My instructor is fair with grading procedures and standards.	4.50	4.75	0.25	0.87 1 2 3 4 5
The course software adds educational value to the course.	4.46	4.50	0.04	0.83 1 2 3 4 5
Feedback from my instructor on papers, exams, and other performance measures is helpful.	4.52	4.60	0.08	0.89 1 2 3 4 5
My instructor's standards for evaluating my work are clear and consistently applied.	4.54	4.60	0.06	0.83 1 2 3 4 5
I am putting a lot of effort into this course.	4.65	4.60		0.66 1 2 3 4 5
The amount of work in this course is appropriate for the credit received.	4.57	4.80	0.23	0.77 1 2 3 4 5
So far, I would rate the quality of instruction in this course as excellent.	4.50	4.40	(0.10)	0.93 1 2 3 4 5
This course is meeting the objectives outlined by the instructor.	4.64	4.60	(0.04)	0.66 1 2 3 4 5
All Scored Questions (N=5)		4.67		

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Recent (6 mo)

Recent (6-12 mo)

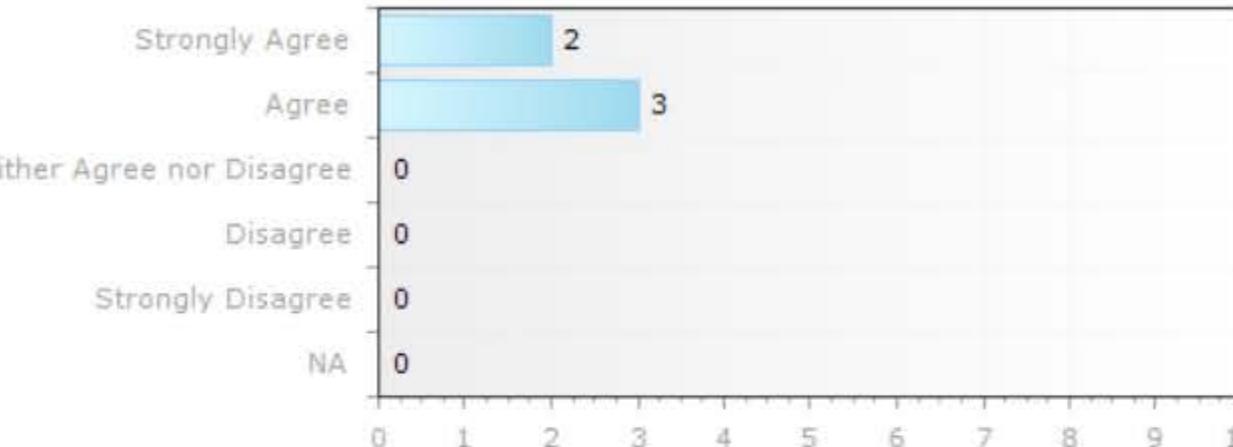
Older (12-24 mo)

Select Course

Viewing/Printing Options

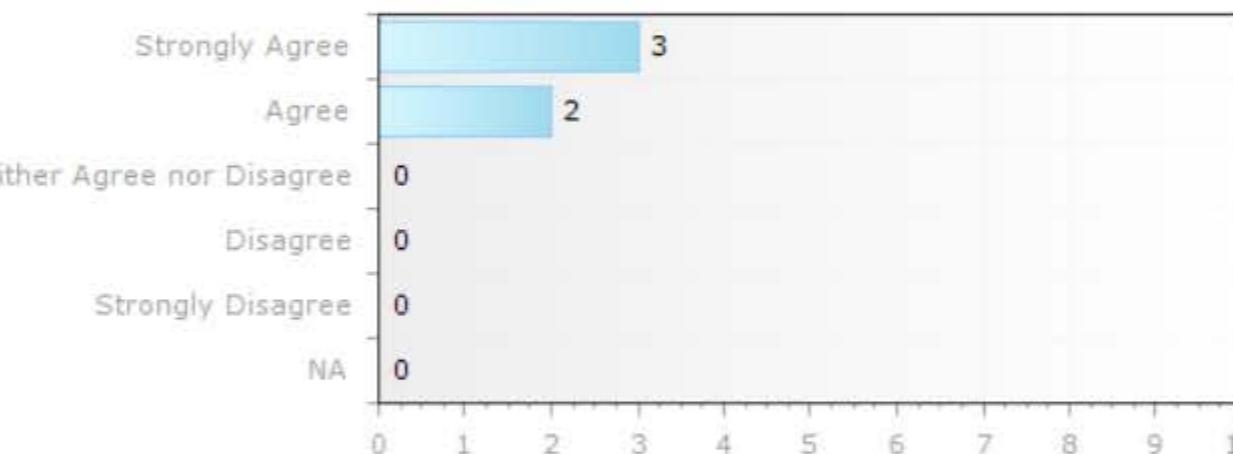
So far, I would rate the quality of instruction in this course as excellent.

Course Average:	4.40
Institution-Wide Average:	4.50
Course Standard Deviation:	0.55
Institution-Wide Standard Deviation:	0.93
Interpolated Median:	4.33
Minimum Value:	1.00
Maximum Value:	5.00
Low Response:	4.00
High Response:	5.00
Response Count:	5



This course is meeting the objectives outlined by the instructor.

Course Average:	4.60
Institution-Wide Average:	4.64
Course Standard Deviation:	0.55
Institution-Wide Standard Deviation:	0.66
Interpolated Median:	4.67
Minimum Value:	1.00
Maximum Value:	5.00
Low Response:	4.00
High Response:	5.00
Response Count:	5



Comments

	Question	Response
1.	Please provide any additional comments. (optional)	She is a very knowledgeable teacher and she genuinely cares about her students. Her delivery as to how she speaks to her students shows that she cares.
2.	Please provide any additional comments. (optional)	gives many examples from her own career to widen everyone's understanding of the material.
3.	Please provide any additional comments. (optional)	Dr. K is passionate about what she teaches. She motivates the class by encouraging us to study and enjoy the nice sunny days. She always responds to emails in a timely manner.

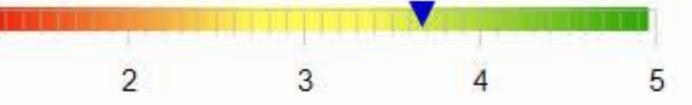
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Recent (6 mo)			Recent (6-12 mo)			Older (12-24 mo)			Select Course		Viewing/Printing Options	
2021 Winter-125 (3/6 - 3/12) - BIO2015-VB12 - Human Pathophysiology: Kostal, Elizabeth												
#	Comp: <input type="button" value="Institution"/> Question	Benchmark Avg.	My Avg.	Diff.	Std. Dev.							Rating
	I am motivated to learn in this course.	4.58	5.00	0.42	0.80	1	2	3	4	5		
	My instructor has clear expectations for the students in this course.	4.55	4.00	(0.55)	0.78	1	2	3	4	5		
	My instructor seems to be knowledgeable about the subject matter.	4.69	4.00	(0.69)	0.61	1	2	3	4	5		
	My instructor motivates me to do my best work.	4.58	4.67	0.09	0.83	1	2	3	4	5		
	My instructor challenges me to extend my capabilities.	4.54	5.00	0.46	0.86	1	2	3	4	5		
	The course syllabus is clear.	4.52	4.67	0.15	0.86	1	2	3	4	5		



Recent (6 mo)	Recent (6-12 mo)	Older (12-24 mo)	Select Course		Viewing/Printing Options
			4.39	3.67	(0.72) 1.02
My instructor uses a variety of teaching methods.					
My instructor encourages thinking and intellectual stimulation.			4.56	4.00	(0.56) 0.84
My instructor's use of audiovisual techniques enhances my understanding of the course material.			4.47	5.00	0.53 0.93
The textbook(s) helps me learn the subject matter.			4.35	5.00	0.65 0.91
Assigned readings are valuable in learning course content.			4.42	4.50	0.08 0.87
The online threaded discussions add educational value to the course.			4.31	5.00	0.69 0.91
Assignments or other graded work is returned promptly.			4.54	5.00	0.46 0.80
My instructor is fair with grading procedures and standards.			4.50	5.00	0.50 0.87
The course software adds educational value to the course.			4.46	5.00	0.54 0.83
Feedback from my instructor on papers, exams, and other performance measures is helpful.			4.52	5.00	0.48 0.89

Recent (6 mo)	Recent (6-12 mo)	Older (12-24 mo)	Select Course	Viewing/Printing Options
promptly.			1 2 3 4 5	
My instructor is fair with grading procedures and standards.	4.50	5.00	0.50	0.87
The course software adds educational value to the course.	4.46	5.00	0.54	0.83
Feedback from my instructor on papers, exams, and other performance measures is helpful.	4.52	5.00	0.48	0.89
My instructor's standards for evaluating my work are clear and consistently applied.	4.54	5.00	0.46	0.83
I am putting a lot of effort into this course.	4.65	5.00		0.66
The amount of work in this course is appropriate for the credit received.	4.57	5.00	0.43	0.77
So far, I would rate the quality of instruction in this course as excellent.	4.50	5.00	0.50	0.93
This course is meeting the objectives outlined by the instructor.	4.64	4.67	0.03	0.66
All Scored Questions (N=3)		4.79		

Misuse of this system is a violation of your school's policies and subject to appropriate disciplinary action.

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[Recent \(6 mo\)](#)[Recent \(6-12 mo\)](#)[Older \(12-24 mo\)](#)[Select Course](#)[Viewing/Printing Options](#)

So far, I would rate the quality of instruction in this course as excellent.

Course Average:

5.00

Institution-Wide Average:

4.50

Course Standard Deviation:

0.00

Institution-Wide Standard Deviation:

0.93

Interpolated Median:

5

Minimum Value:

1.00

Maximum Value:

5.00

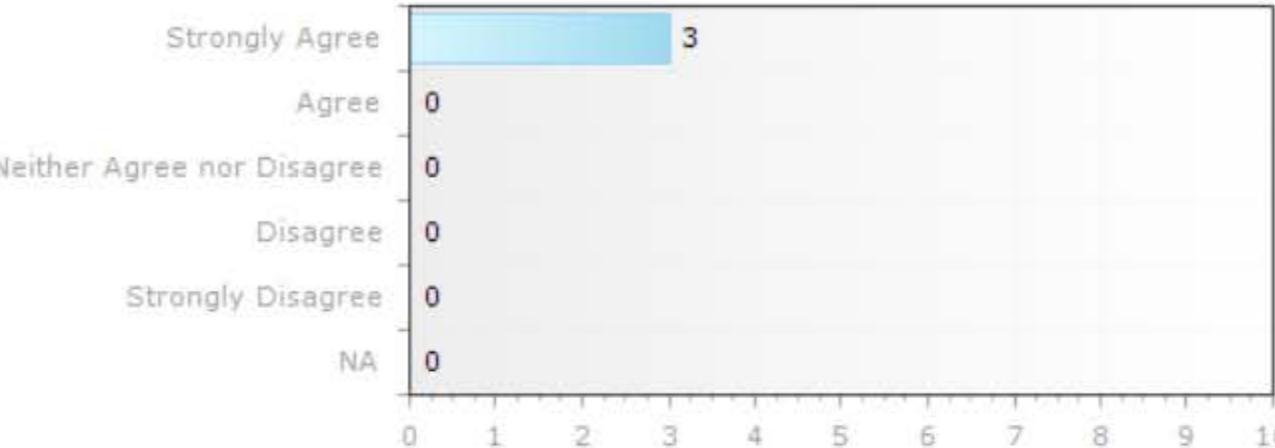
Low Response:

5.00

High Response:

5.00

Response Count:

3

This course is meeting the objectives outlined by the instructor.

Course Average:

4.67

Institution-Wide Average:

4.64

Course Standard Deviation:

0.58

Institution-Wide Standard Deviation:

0.66

Interpolated Median:

4.75

Minimum Value:

1.00

Maximum Value:

5.00

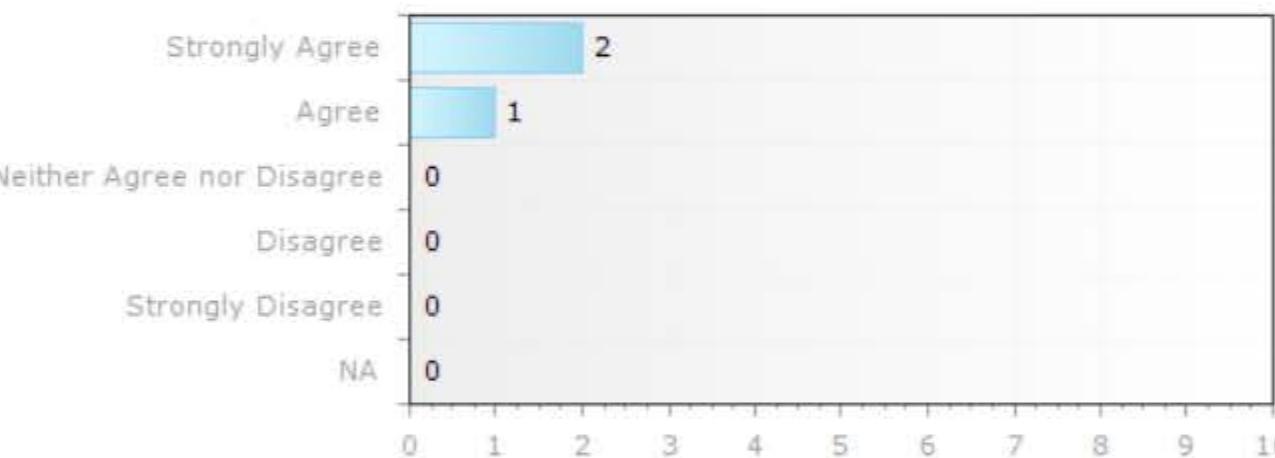
Low Response:

4.00

High Response:

5.00

Response Count:

3

Comments

Question	Response
1. Please provide any additional comments. (optional)	N/A
2. Please provide any additional comments. (optional)	Dr. K is passionate about what she teaches. She motivates the class by encouraging us to study and enjoy the nice sunny days. She always responds to emails in a timely matter.
3. Please provide any additional comments. (optional)	Dr. Kostal is very knowledgeable about course. I really appreciate Dr. Kostal for taking the time teach our class.

Misuse of this system is a violation of your school's policies and subject to appropriate disciplinary action.

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Exhibit C

Return to Campus Guide Communication

From: Human Resources Announcements <HumanResourcesAnnouncements@southuniversity.edu>
Sent: Wednesday, February 10, 2021 2:40 PM
Subject: Updated Return to Campus Guide

Faculty and Staff,

Please review the most updated Return to Campus Guide attached.

Thank you,

Human Resources

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[South University](#)

Return to Campus Communication

From: South University Announcements <suannouncements@southuniversity.edu>
Sent: Thursday, February 18, 2021 9:59 AM
Subject: Return to Campus plan for all campus-based staff and faculty

Good morning,

It is hard to imagine that we are just under a year of when the COVID-19 pandemic began. We could have never foreseen a year ago, the impact that this virus would have on our daily lives for so long. With the COVID-19 vaccine rollout now well underway, we are pleased that many of our campuses have been able to support our communities by helping to administer the COVID-19 vaccines locally. As the COVID-19 vaccine becomes more available in your communities, the University recommends that employees and students become vaccinated against COVID-19 as they are deemed eligible by public health officials. Getting a COVID-19 vaccine adds one more layer of protection against infection for you, your coworkers, students, and your families.

As of April 19th 2021, all campus based faculty and staff who have been working remotely temporarily due to COVID-19, will return to campus. South University is providing this advance notice of approximately 60 days to give staff and faculty time to make plans for the return.

Staff and faculty supporting South University Online programs will remain remote due to the inability to properly social distance onsite.

Instructional faculty and students participating in on-campus activities will continue to follow the protocols and health screening steps outlined in [Return to Campus Staff and Faculty Guidelines](#). Some virtual learning will continue to be available.

The following Health & Safety protocols will remain in place for everyone on campus:

- Wear a face mask at all times on campus when not in personal work space
- Limit physical proximity to maintain a distance of at least 6 feet when possible
- Use of frequent handwashing using soap or hand sanitizer that is at least 60% alcohol
- Avoid touching one's face
- Self-monitoring for [signs and symptoms](#) of COVID-19 based on CDC guidelines
- Individuals who have positive signs or symptoms of COVID-19 or who have a sick family member at home with COVID-19 should notify their supervisor.
- Safety protocols will continue to be updated in accordance with CDC guidance and local executive orders
- Limited communal spaces on campus will re-open for students as long as are strictly followed. Faculty and staff break areas will continue social distancing requirements including limited seating and increased cleaning.

As the University prepares for our Spring term, we must provide our students with an exemplary learning and support experience on campus and virtually. We will continue to offer many South University Spring term courses on campus as well as SouthVR options.

We have worked continuously with our team members since the inception of the COVID-19 pandemic to create and maintain alternative work arrangements, and provide a safe environment for our students, faculty and staff. During the first 4 phases of the Return to Campus Plan, we have permitted exceptions to the general requirements based on the CDC guidelines to assist our faculty and staff with childcare needs. These approvals will end on April 18, 2021 as we move forward with bringing all staff and faculty back on-campus April 19, 2021. This notice is provided as early as possible to enable staff and faculty time to secure childcare, if needed.

We will consider medical and personal requests on an individual basis observing the process under the Americans with Disabilities Act (ADA) for those with a qualified condition. We must balance all requests against the needs of our students and the campus community. Those seeking an extension of remote work arrangements due to a disability should contact Hilary Donahoe in Human Resources and she will provide the appropriate forms for you to complete.

South University is committed to keeping our community safe and maintaining effective communication throughout the pandemic. Please visit: <https://www.southuniversity.edu/about/coronavirus-info-resources> for a current copy of the *Return to Campus Staff and Faculty Guidelines*.

Thank you,
Steve

Steven K. Yoho
Chancellor
University Administration

709 Mall Blvd.
Savannah, GA

www.southuniversity.edu

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[South University](#)

Communication to my Chair after my ADA was denied and I was considering my legal options and next steps

From: Kostal, Elizabeth
Sent: Monday, April 19, 2021 10:07 AM
To: Robertson, Jason <jorobertson@southuniversity.edu>
Subject:

Good morning Jason,

I am not abandoning my students and I will be teaching as per usual.

Elizabeth

Dr. Elizabeth Kostal
Academic Program Director, Health Sciences & Public Health
Associate Professor, Human Pathophysiology, Human Anatomy & Physiology, Chemistry, Clinical Nutrition

301 Bendix Rd., Suite 100
Virginia Beach, VA 23452

Phone: (757) 493-6983
Fax: (757) 493-6990
ekostal@southuniversity.edu
southuniversity.edu

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South University

Exhibit D



MEDICAL INQUIRY FORM IN RESPONSE TO AN ACCOMMODATION REQUEST

Please Print Employee Name: Dr. Elizabeth Kostal

A. Questions to help determine whether an employee has a disability.

For reasonable accommodation under the ADA, an employee has a disability if he or she has an impairment that substantially limits one or more major life activities or a record of such impairment. The following questions may help determine whether an employee has a disability:

Does the employee have an impairment that meets the definition set forth above?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
---	---	-----------------------------

Answer the following question based on what limitations the employee has when his or her condition is in an active state and what limitations the employee would have if no mitigating measures were used. Mitigating measures include things such as medication, medical supplies, equipment, hearing aids, mobility devices, the use of assistive technology, reasonable accommodations or auxiliary aids or services, prosthetics, learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, and physical therapy. Mitigating measures do not include ordinary eyeglasses or contact lenses.

Does the impairment substantially limit a major life activity as compared to most people in the general population?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
---	---	-----------------------------

Note: Does not need to significantly or severely restrict to meet this standard, i.e., substantially limits the ability to perform a major life activity as compared to the general population. It may be useful in appropriate cases to consider the condition under which the individual performs the major life activity; the manner in which the individual performs the major life activity; and/or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity.

If yes, what major life activity(s) (includes major bodily functions) is/are affected?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
--	---	-----------------------------

- | | | | | |
|--|---|---|---|---|
| <input type="checkbox"/> Bending
<input checked="" type="checkbox"/> Breathing
<input type="checkbox"/> Caring For Self
<input type="checkbox"/> Concentrating
<input type="checkbox"/> Eating | <input type="checkbox"/> Hearing
<input type="checkbox"/> Interacting With Others
<input type="checkbox"/> Learning
<input type="checkbox"/> Lifting
<input type="checkbox"/> Performing Manual Tasks | <input type="checkbox"/> Reaching
<input type="checkbox"/> Reading
<input type="checkbox"/> Seeing
<input type="checkbox"/> Sitting
<input type="checkbox"/> Sleeping | <input type="checkbox"/> Speaking
<input type="checkbox"/> Standing
<input type="checkbox"/> Thinking
<input type="checkbox"/> Walking
<input type="checkbox"/> Working | <input checked="" type="checkbox"/> Other: (describe)
Please see hx below. |
|--|---|---|---|---|

B. Questions to help determine whether an accommodation is needed.

An employee with a disability is entitled to a reasonable accommodation only when the accommodation is needed because of the disability. The following questions may help determine whether the requested accommodation is needed because of the disability:

What limitation(s) is interfering with job performance or accessing a benefit of employment?

Dr. Kostal has a history of asthma, as well as scarring in the lungs due to repeated bronchitis and cardiopulmonary bypass. Dr. Kostal has a history of superior vena cava syndrome with full reconstruction under hypothermic circulatory arrest, dilated cardiomyopathy and pacemaker implantation. Vaccination has not been recommended for this patient due to previous adverse reactions.

What job function(s) or benefits of employment is the employee having trouble performing or accessing because of the limitation(s)? Dr. Kostal continues to complete her duties successfully via VR (virtual remote). Dr. Kostal represents a high risk category for life threatening complications with exposure/infection to COVID-19.

How does the employee's limitation(s) interfere with his/her ability to perform the job function(s) or access a benefit of employment?

Life threatening risk with exposure/infection with COVID-19.

C. Questions to help determine effective accommodation options.

If an employee has a disability and needs an accommodation because of the disability, the employer may provide a reasonable accommodation which enables the employee to perform the essential job functions. The following questions may help determine effective accommodations:

Do you have any suggestions regarding possible accommodations to improve job performance? (For example: restrictions on # of working hours, workstation changes, limited duties and duration)

If so, what are they? (Provide specific examples) due to COVID-19 risk and exposure.

How would your suggestions improve the employee's job performance? Please see the above.
Life threatening risk with exposure/infection with COVID-19.

What is the anticipated duration of the accommodation(s)? (Provide date accommodation to begin)

Dr. Kostal continues to complete her duties successfully via VR (virtual remote). This should continue until risk is fully mitigated. Patient has hx of adverse reaction to vaccines.

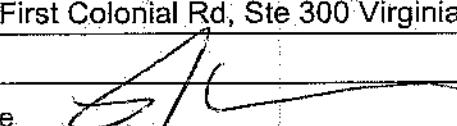
D. Other questions or comments.

Medical Professional's Printed Name Dr. Jon Grammes, DO

Medical Facility Name Sentara Cardiology Specialists

Medical Facility Address 1101 First Colonial Rd, Ste 300 Virginia Beach, VA 23454

Phone Number 757-395-1760

Medical Professional's Signature 

Date Form Completed 4/15/21

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Exhibit E



4/16/2021

Elizabeth Kostal
2900 Bruce Station
Chesapeake, VA
23321

Dear Elizabeth,

This letter is to confirm your request where you raised the concern that you needed a reasonable accommodation of remote working conditions following the campus return on 4/19/2021.

Your medical inquiry form submitted on 4/15/2021 has been evaluated as it applies to the Americans with Disabilities Act (ADA). It has been determined that your form did not outline a disability consistent with an approval for remote working conditions. Please note that remote working approvals are no longer being issued to mitigate risk of COVID19.

Your approval for remote working conditions will end along with all COVID19 South University granted remote work approvals on 4/18/2021 to remain consistent with the faculty and staff members who have been evaluated under the ADA for the campus return taking place on 4/19/2021.

South University has implemented its [Return to Campus Staff and Faculty Guidelines](#) to ensure the safety of our faculty and students. We're looking forward to the full campus return to better service our student base in a safe environment for our faculty, staff, and students.

Thank you for your understanding,

Hilary Donahoe
Human Resources
912-250-0505
hdonahoe@southuniversity.edu

Exhibit F

Your medical inquiry has been reviewed as it applies to the American's with Disabilities Act (ADA). Unfortunately, your condition does not qualify for remote working conditions as defined by the ADA. I've attached your accommodation letter here.

If you are unable to return to campus on 4/19/2021, we can explore your options through leave of absence. You have a full twelve weeks of FMLA time available to care for a medical condition for you and/or a family member and we can also look into a 30 day personal leave of absence based on the approval of your campus/HR. If you wish to move forward with a leave of absence beginning on 4/19/2021, please let me know, and we can work through the process together.

Thank you,

Hilary Donahoe

From: Kostal, Elizabeth <ekostal@southuniversity.edu>
Sent: Monday, April 19, 2021 10:06 AM
To: Donahoe, Hilary R <hdonahoe@southuniversity.edu>; Girardeau, Catherine A <cgirardeau@southuniversity.edu>; Moore, Angela <anmoore@southuniversity.edu>; Johnson, Donald W. <dojohnson@southuniversity.edu>
Cc: Robertson, Jason <jorobertson@southuniversity.edu>
Subject: Re: ADA - Kostal

Thank you for the response Ms. Donahoe.

Denying reasonable accommodations of virtual remote work for two conditions that qualify under the Americans with Disabilities Act (ADA), both asthma and heart disease, for an employee who currently has no justifiable reason to be on ground campus during a 4th uptick in COVID-19 cases within a global pandemic can be interpreted as unreasonable. Aside from the 10,000+ pages of my medical file showing that I have been incredibly adversely affected by the two aforementioned conditions, the outcome for me with these two qualifying conditions sets my probability for an irreversible adverse event quite high.

I appreciate the attachment of the Return to Campus Staff and Faculty Guidelines. I am acutely aware of the document as I am one of the 7 members who have worked on the South University COVID-19 Health and Safety Committee for the past year under the Chancellor and the COVID-19 task force. In this role, we have worked to keep employees, staff, and faculty safe. The irony is now that the University will not allow me to protect myself; one of the highest risk categories due to my qualifying ADA conditions.

What you are essentially now asking me to do is to make a decision, that either way, bears a negative outcome. You are asking me to determine for my family whether my actual physical health is more important than my financial health and potentially vice versa. This is a most incredulous position to be placed in by an employer and because this decision only results in an adverse outcome of some form, it would be inherently irresponsible of me not to consult with

the Department of Justice who oversees the application of the Americans with Disabilities Act (ADA). Not only for myself and the situation in which I have now arrived based upon the actions of my employer, but also for the 100% of ADA applications that have been currently denied.

I will let you know what the Department of Justice has advised.

Respectfully,
Elizabeth Kostal

From: Girardeau, Catherine A <cgirardeau@southuniversity.edu>
Sent: Tuesday, April 20, 2021 4:50 PM
To: Kostal, Elizabeth <ekostal@southuniversity.edu>
Cc: Donahoe, Hilary R <hdonahoe@southuniversity.edu>; Johnson, Donald W. <dojohnson@southuniversity.edu>; Haines, Lynne <thaines@southuniversity.edu>
Subject: RE: ADA - Kostal

Dear Elizabeth,

Thank you for your recent email. We understand your position, but point out we have accommodated you and others with remote work opportunities for over one year during the pandemic. While the pandemic is not over, the CDC and the State of Virginia have implemented return to work protocols and guidance for employers. In our view, you cannot adequately perform the full spectrum of job duties contained in your job description via remote work, including partnering with Campus leadership, admissions, and academic staff. In addition, you cannot effectively work remotely while promoting your program in the community, especially under circumstances where state and local government have eased COVID restrictions and our business partners have returned to the workplace in person.

You have available to you 12 weeks of FMLA and other leave of absence options under our policies. You may also wish to explore any options you may have under short term disability or other disability policies with Hilary Donahoe, our benefits and leave administrator.

As you may know, the Equal Employment Opportunity Commission has issued COVID-era guidance on compliance with the Americans with Disabilities Act. Below I am quoting from D.15, one of the EEOC's FAQs related to compliance with the ADA. I have yellow highlighted the relevant language. Fundamentally, we excused you from compliance with the full spectrum of your job duties during the first year of the pandemic. We are not legally required to do so as it is an unreasonable burden for the University to continue to pay you but to excuse you from certain key duties. In addition, we have taken steps to ensure your safety at work by following CDC guidelines such as social distancing, requiring masks on campus, and extensive cleaning protocols.

D.15. Assume that an employer grants telework to employees for the purpose of slowing or stopping the spread of COVID-19. When an employer reopens the workplace and recalls employees to the worksite, does the employer automatically have to grant telework as a reasonable accommodation to every employee with a disability who

Exhibit G

the Department of Justice who oversees the application of the Americans with Disabilities Act (ADA). Not only for myself and the situation in which I have now arrived based upon the actions of my employer, but also for the 100% of ADA applications that have been currently denied.

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Elizabeth Kostal

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Sent: Tuesday, April 20, 2021 4:50 PM
To: Kostal, Elizabeth <ekostal@southuniversity.edu>
Cc: Donahoe, Hilary R <hdonahoe@southuniversity.edu>; Johnson, Donald W. <dojohnson@southuniversity.edu>; Haines, Lynne <thaines@southuniversity.edu>
Subject: RE: ADA - Kostal

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D.15. Assume that an employer grants telework to employees for the purpose of slowing or stopping the spread of COVID-19. When an employer reopens the workplace and recalls employees to the worksite, does the employer automatically have to grant telework as a reasonable accommodation to every employee with a disability who

requests to continue this arrangement as an ADA/Rehabilitation Act accommodation? (9/8/20; adapted from 3/27/20 Webinar Question 21)

No. Any time an employee requests a reasonable accommodation, the employer is entitled to understand the disability-related limitation that necessitates an accommodation. If there is no disability-related limitation that requires teleworking, then the employer does not have to provide telework as an accommodation. Or, if there is a disability-related limitation but the employer can effectively address the need with another form of reasonable accommodation at the workplace, then the employer can choose that alternative to telework.

To the extent that an employer is permitting telework to employees because of COVID-19 and is choosing to excuse an employee from performing one or more essential functions, then a request—after the workplace reopens—to continue telework as a reasonable accommodation does not have to be granted if it requires continuing to excuse the employee from performing an essential function. The ADA never requires an employer to eliminate an essential function as an accommodation for an individual with a disability.

The fact that an employer temporarily excused performance of one or more essential functions when it closed the workplace and enabled employees to telework for the purpose of protecting their safety from COVID-19, or otherwise chose to permit telework, does not mean that the employer permanently changed a job's essential functions, that telework is always a feasible accommodation, or that it does not pose an undue hardship. These are fact-specific determinations. The employer has no obligation under the ADA to refrain from restoring all of an employee's essential duties at such time as it chooses to restore the prior work arrangement, and then evaluating any requests for continued or new accommodations under the usual ADA rules.

For these reasons, we expect you to return to the workplace in person immediately, and coordinate your return with Don Johnson. We are willing to make the accommodation for you to teach your courses virtually for the remainder of this term from the campus, and ask that you follow all of the safety protocols on place.

Cathy

Exhibit H

✓ Yes ? Maybe × No Propose new time Reply all Tentative Categorize Delete ...

● Virginia Beach Virtual Town Hall

🕒 Thu 5/13/2021 3:00 PM - 4:00 PM

Organizer

📍 GTM Details Below

 Yoho, Steven K.

📅 Calendar

✓ Yes: 26

🕒 Remind me: 15 minutes before

 Johnson, Donald W.
Required

≡ Hello, the chancellor will be on campus on May 13 and will be holding a virtual town hall from 3:00 – 4:00, please clear your schedules. Thank you. DJ

-----Original Appointment-----

From: Yoho, Steven K. <syoho@southuniversity.edu>

Sent: Tuesday, May 4, 2021 10:13 AM

To: Yoho, Steven K.; Johnson, Donald W.

Subject: Virginia Beach Virtual Town Hall

When: Thursday, May 13, 2021 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: GTM Details Below

Virginia Beach Town Hall

Thu, May 13, 2021 3:00 PM - 4:00 PM (EDT)

 McAulay, Brian J
Required

 Echols, Deana C.
Required

 Weeks, Ashley E.
Required

 Dawn Ide - 5 (dide@sout...
Optional

 Duckwall, John (jduckwall...
Optional

 Ethan Evans (emevans@s...
Optional

Exhibit I

September 17, 2019

Dr. Elizabeth Kostal
2900 Bruce St.
Chesapeake VA 23321

Dear Dr. Kostal:

This letter will confirm the terms of our offer of employment with South University – Virginia Beach campus. No oral understanding outside of what is written herein will constitute an agreement between the parties. Further, it is understood that you are not a party to any employment agreement that would impair or prevent your performance pursuant to this offer letter.

We are pleased to offer you the following position:

1. Position: Program Director Public Health, South University College of Nursing and Health Sciences and Associate Professor Nursing and Health Sciences. On local academic matters, you report to the Campus Director for the campus. On matters related to the College of Health Professions, you report to the Department Chair.
2. Remuneration: South University agrees to pay an annualized salary of \$92,500; (\$ 6,000 included in this amount in recognition of your administrative duties). Salary will be paid for services rendered according to the standard pay and employment practices of South University.
3. Appointment: This appointment is for one year, commencing on October 07, 2019, and ending on October 08, 2020.

Terms and Renewal Provisions:

This is a full-time position with a 40 hour-per-week schedule, and is classified as overtime exempt under the Fair Labor Standards Act. The typical teaching load for a full-time faculty member is set at 16 courses for each year of their appointment. As Program Director you will receive a 25% reduction in this teaching load to 12 courses per year in recognition of the administrative and other academic leadership responsibilities associated with your position.

This appointment does not automatically renew. An offer to renew (or decision not to renew) this appointment and the duration or terms of such a renewal, is at the discretion of South University, and will be made in line with the normal business, employment, and academic practices of the University.

This appointment is fully subject to and governed by the terms and conditions further described in the *South University Employee Handbook*, the *Faculty Supplement to the Employee Handbook*, and any other policy adopted by South University. South University reserves the right to modify the employment terms, policies, procedures, teaching loads, compensation and/or benefits. Additionally, South University reserves the right to remove all administrative duties and request that only faculty duties be performed. In that instance, you will be paid only the base salary for Associate Professor noted above. You will be notified in writing of the modifications as soon as practical. In addition, it is expected that you shall observe and conform to all other policies and directives established by South University and perform those duties as defined in the attached job description.

4. Benefits:

You will be eligible to participate in South University's group life, medical, vision, and dental insurance plans. Coverage is effective, subject to timely enrollment, on the first of the month, following 30 days of active full-time employment.

Additionally, you will be eligible to participate in South University's 401 (k) Plan and/or Roth Retirement Savings Plan on the first day of the month following 30 days of active full-time employment. Plan provisions allow voluntary salary deferral contributions up to the maximum allowable by the IRS on a pre-tax basis.

South University reserves the right to eliminate, modify or amend benefit plan offerings at any time. The terms and conditions of the benefit plan summary descriptions shall govern at all times.

5. Paid Time Off:

You will enjoy 12 paid holidays throughout the year. Additionally, this position is eligible to earn 25 days of Paid Time Off (PTO) per calendar year. PTO hours will accrue on a bi-weekly basis. Up to 40 hours of PTO are eligible for roll over into the ensuing calendar year. Your PTO allotment will be pro-rated based on your start date for your first calendar year of service.

It is expected that you will schedule and manage your time off such that it does not conflict with your teaching and/or other academic responsibilities as noted in your job description and the *South University Faculty Supplement to the Employee Handbook*. Such responsibilities include but are not limited to participation in mandatory faculty meetings, training, new student orientations and graduation ceremonies. All paid time off should be recorded in

our time-keeping system, Dayforce, and approved in advance by your supervisor.

6. Faculty Development: South University requires its faculty members to establish a faculty development plan each academic year and document their progress toward completion of the plan as described in the *Faculty Supplement to the South University Employee Handbook*. Full-time faculty members are required to complete a minimum of 24 hours of faculty development each academic year. Faculty members hired after the beginning of the academic year will be responsible for a prorated number of required hours. Appropriate development activities completed prior to joining South University, if accrued within the academic year, may be credited toward the faculty member's total completed hours.

This appointment is fully subject to and governed by the terms and conditions further described in the South University Employee Handbook, the Faculty Supplement to the Employee Handbook, and any other policy adopted by South University. South University reserves the right to modify the employment terms, policies, procedures, teaching loads, compensation and/or benefits. Additionally, it is expected that you shall observe and conform to all other policies and directives established by South University and perform those duties as defined in the attached job description.

7. Performance and Salary Review: A performance review, summarizing and evaluating your performance during the prior appointment year, will be conducted annually by your supervisor, to include evaluation of completed faculty development hours.
8. Teaching Outside the University: Faculty members are not permitted to teach or serve as a dissertation committee member for another institution, or consult for an outside organization without prior written consent from their respective South University College Dean and Campus Director.

Please note that this offer of employment, and any subsequent employment, is contingent upon your satisfactory completion of all new hire paperwork, successful work eligibility verification, and passing a background check in accordance with South University policy.

Should you accept this offer of employment, you will receive an important First Time Access message to the personal email address that you provided. If you do not receive this email within ten (10) business days of returning this signed offer, first check your spam/junk folder and then contact your campus Human Resources department if you find that it was not delivered. This email will provide you with your Dayforce HR Portal username and temporary password so that you may set up your account and complete the electronic Onboarding process.

If there are any questions relative to this appointment letter, please let us know as soon as possible. If you agree with the terms and conditions in this letter, and it constitutes the basis of

your understanding, please sign and date where indicated below and return an original copy of the signed appointment Veronica Mullen vmullen@southuniversity.edu.

We know you share in the excitement of the continued development of an excellent and vibrant Nursing and Health Sciences program at South University. You can and will make a difference.

Sincerely,

Dr. Don Johnson
Campus Director- Virginia Beach campus

Attachments:

South University Employee Handbook
Faculty Supplement to the Employee Handbook
Job Description
Benefits Summary

By my signature below, I confirm that I have reviewed and accept the terms of this appointment letter and that I will comply with the terms of South University's policies applicable to me.

Dr. Elizabeth Kostal

DATE

Exhibit J

REDACTED

From: Grahek, Heather <hgrahek@southuniversity.edu>

Sent: Tuesday, May 4, 2021 11:35:50 AM

To: Krouse, Alisa M. <akrouse@southuniversity.edu>; _SU Health and Safety <SUHealthandSafety@southuniversity.edu>

Subject: Faculty

Hi Alisa,

We have a faculty member who was here yesterday doing lab check-offs and now has tested positive for COVID. She was around students and faculty yesterday on campus.

President McCoy asked me to reach out to you for guidance.

Thank you,

Heather

From: Scarboro, Gina M. <gscarboro@southuniversity.edu>

Sent: Tuesday, May 4, 2021 12:05 PM

To: Grahek, Heather <hgrahek@southuniversity.edu>; Krouse, Alisa M. <akrouse@southuniversity.edu>; _SU Health and Safety <SUHealthandSafety@southuniversity.edu>; Haines, Lynne <thaines@southuniversity.edu>

Subject: Re: Faculty

Heather,

Everyone who had close contact with the faculty member-within 6 feet for 15 or more minutes cumulatively must quarantine for 14 days unless they are fully vaccinated. I am not sure how HR is handling employees in this situation. Students should be able to attend virtually in lieu of being on campus.

Thanks,

Gina

From: Grahek, Heather <hgrahek@southuniversity.edu>

Sent: Tuesday, May 4, 2021 12:17 PM

To: Scarboro, Gina M. <gscarboro@southuniversity.edu>; Krouse, Alisa M. <akrouse@southuniversity.edu>; _SU Health and Safety <SUHealthandSafety@southuniversity.edu>; Haines, Lynne <thaines@southuniversity.edu>

Cc: McCoy, James F. <jfmccoy@southuniversity.edu>; Yerk, Melanie A. <myerk@southuniversity.edu>

Exhibit K

REDACTED

From: Scarboro, Gina M. <gscarboro@southuniversity.edu>

Sent: Tuesday, May 25, 2021 5:07 PM

To: Kostal, Elizabeth <ekostal@southuniversity.edu>

Subject: RE: Recommendations 5_25_21

Elizabeth,

It is not official but one of the campus presidents requested leniency for allowing work remotely due to isolation, HR allowed the campus to make the decision. That being said, it is certain that HR will not allow workers to continue working entirely remotely. You did not hear it from me 😊

Gina

From: Kostal, Elizabeth

Sent: Tuesday, May 25, 2021 5:05 PM

To: Scarboro, Gina M. <gscarboro@southuniversity.edu>

Subject: Re: Recommendations 5_25_21

Hi Gina,

Quickly, I wanted to ask...you stated that HR has lightened the PTO policy from previously and they are allowing supervisors to determine if someone can teach remotely VR while out on PTO during isolation or quarantine? Just wanted to know as this comes up quite often.

Thanks again!

Dr. Elizabeth Kostal

Academic Program Director, Health Sciences & Public Health

Associate Professor, Human Pathophysiology, Human Anatomy & Physiology, Chemistry, Clinical Nutrition

301 Bendifx Rd., Suite 100

Virginia Beach, VA 23452

Phone: (757) 493-6983

Fax: (757) 493-6990

ekostal@southuniversity.edu

southuniversity.edu



South University – the right direction for a brighter future

From: Scarboro, Gina M. <gscarboro@southuniversity.edu>
Sent: Tuesday, May 25, 2021 4:56 PM
To: Pereira, Angelique M. <apereira@southuniversity.edu>; Kostal, Elizabeth <ekostal@southuniversity.edu>; Smethurst, Kristen <ksmethurst@southuniversity.edu>; Macias-Moriarity, Liliairica Z. <lmacias-moriarity@southuniversity.edu>; Andrews, Margaret T <mtandrews@southuniversity.edu>; Tucker, Sandra L. <satucker@southuniversity.edu>
Subject: Recommendations 5_25_21

Committee members,

Thank you again for your time and thoughtful deliberation at our meeting today. Attached are the drafted recommendations that I will send to the chancellor. Please review and revise as needed by tomorrow at 9 AM.

Regards,

Gina

Gina Scarboro, D.B.A., CAA
Dean, College of Health Professions
University Administration

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[**South University**](#)

Exhibit L



6/3/2021

Elizabeth Kostal
2900 Bruce Station
Chesapeake, VA 23321

Dear Elizabeth,

This letter is intended to revisit and clarify the response to your request for a reasonable accommodation to work remotely to perform the essential duties of your role as Academic Program Director for the Public Health program.

We have temporarily granted your request for remote working arrangements, to be re-visited and reconsidered every 30 days. You are currently working remotely and servicing your students. We are thankful for your ongoing dedication and support to our continuing student base throughout the pandemic.

As the pandemic progresses, vaccinations increase, and cases decline. Restrictions have been fully lifted in the state of Virginia. From the standpoint of public health officials and governmental officials in Virginia, there are no impediments to employees returning to the workplace. The country is looking forward to reaching herd immunity in the near future with a 70% vaccination rate. Our president expects this to be reached as early as the 4th of July holiday, at which time we expect the US government to declare the pandemic-related emergency over. According to published data, Virginia is expected to be at a vaccination rate of approximately 75% by early July 2021. We continue to monitor these public resources and data and encourage you to do the same.

For these reasons, we are willing to extend your remote working conditions as an accommodation for 30 days through 7/2/2021. At that point, we will re-evaluate your performance, the status of your medical condition, and the state of the pandemic with government and public health regulatory bodies. We may require additional medical documentation at that time. We are willing to consider extension of the 30-day periods of remote work dependent on guidance from public health and governmental authorities as well as your own medical providers.

Summer of 2021 is a critical time in program development. We are expecting to emphasize student recruitment and community involvement, which is key to the program director role. We also plan to transition more courses back to campus as students return, which will require in person student counseling and instruction.

If you wish to continue remote working conditions after 7/4/2021, we will require an updated medical inquiry form due by 6/29/2021 that also indicates your reasoning for being unable to be vaccinated. At that time, we may also consider you for teaching or non-managerial roles that may be better suited for working remotely.

In order to continue working collaboratively and engage in the interactive process as required by the ADA, please ensure that all of your communication about your accommodation is conducted directly with me.

Please feel free to reach out to me with any additional questions or concerns.

Sincerely,



Catherine Girardeau
Director of Human Resources
912-650-5675
cgirardeau@southuniversity.edu